rural Montana, where a sixth PCS service is not particularly needed. The potential value of the spectrum that would be available for reallocation is vastly reduced by its location (rural) and fragmentation (approximately 12 MHz blocks). Attached at Appendix D is a report by MIT MacDonald Professor of Economics, Dr. Jerry A. Hausman. He notes that "[e]arly recovery of smaller amounts of non-contiguous spectrum is likely to be a less economically efficient solution than later recovery of larger blocks of contiguous spectrum." Hausman Report, at 4. Using data collected from the PCS spectrum auctions to compare the value of smaller and larger spectrum blocks, Dr. Hausman concludes that the government could earn 2.3-10.6 times more revenue (on a net present value basis) by waiting fifteen years to auction channels 60-69 in a cleared spectrum block. This is because the market places a significantly higher value on larger blocks of contiguous spectrum. In addition, Dr. Hausman calculates the consumer value lost to increased interference that would result from the core-channel approach. Using a Boston station as the basis for his analysis, Dr. Hausman concludes that the loss in consumer value alone "is between 3.5 and 4.7 times higher than the revenue that the Commission would raise in an early auction of the spectrum." Hausman Report, at 3.

IV. THE COMMISSION SHOULD ADOPT THE BROADCASTERS' MODIFIED TABLE SUBJECT TO FURTHER ADJUSTMENTS

After extensive analysis of the FCC DTV Table, Broadcasters have produced a Modified Table that demonstrates that use of the full television band reduces interference to existing NTSC and to new DTV stations and improves opportunities for replication and maximization. The Modified Table does not ignore the progress made by the Commission. Instead, it builds on the FCC DTV Table, incorporating only those changes necessary to better protect existing NTSC service, replicate that service,

maximize flexibility for future adjustments, and reflect state-of-the-art technical planning factors. It is important to note that the Modified Table is far from perfect. Changes will need to be made to reflect NTSC database changes, DTV tower site moves, power level adjustments, minimum service areas, channel swaps and substitutions, and other alterations. Despite these modifications, and indeed to begin to make these modifications, we urge the Commission to adopt all of the principles and methods of the Modified Table as its preliminary DTV allotment/assignment table subject to the adjustment process described in these comments, as it moves toward adoption of a final DTV table of allotments/assignments.

A. DEVELOPMENT OF MODIFIED TABLE

A full description of the how the Modified Table was crafted is contained in Appendix E. Its significant results are set forth in Part III. We simply note here several features crucial to the development of the Modified Table. First, we corrected the FCC DTV Table in several key areas, as discussed in detail in Part III. These adjustments included avoiding the assignment of channels 3 and 4 in the same market; incorporating the appropriate VHF environmental and receiver noise factors; correcting channel assignments near the Canadian and Mexican borders; and modifying adjacent channel assignments.

Second, Broadcasters endeavored to preserve as many FCC DTV Table assignments as possible, while using the entire band to create a pool of eligible DTV channels. As a result, we assigned channels throughout the entire band as necessary, but retained the FCC DTV Table assignments within channels 7-52 wherever doing so would not increase interference to existing NTSC service.

Third, after careful consideration, the Broadcasters Caucus Technical Committee proposed that certain technical changes be incorporated into the Modified Table. These changes are designed to improve DTV coverage and further minimize interference. They include:

- Reducing UHF receiver noise figures from 10dB to 7dB;
- Incorporating a dipole factor correction; and
- Using no minimum power.[97/]

Unlike the FCC DTV Table, the Modified Table imposes no minimum or maximum power levels. The power shown in the Modified Table is that level needed simply to achieve as much NTSC service area replication as possible. The establishment of maximum facilities, see Notice, at 40, is unnecessary so long as the Commission uses an approach to DTV stations that protects DTV station contours. Parameters to ensure that all stations are equipped to serve a reasonably large area and are competitive with other stations in the market are important. Underlying Broadcasters' support of station maximization is the ambition that discrepancies in station service areas can be reduced in the DTV world, even as the prime goal of replication is sought. However, Broadcasters oppose the use of minimum power levels as the vehicle to achieve a degree of parity among station. Minimum power levels unfairly disadvantage stations with smaller antenna height in a given market. And the use of maximum power levels may unnecessarily cap the ability of stations to achieve greater service areas. Rather than establish minimum power levels, the Commission should adopt minimum DTV service areas that use a combination of power and tower height parameters to achieve the

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[97/] These changes also were made to the Baseline Table, described in Part III, to ensure an apples-to-apples comparison between the Modified Table and the FCC DTV Table approaches.

minimum service contours. Such minimum service areas should be determined after more study and should assure all stations of a reasonable coverage area without impinging on the ability of all stations to at least replicate their NTSC service.[98/]

Finally, the Modified Table also incorporates certain channel and spacing features which were present in the table Broadcasters first submitted to the Commission in January 1995. These features, we continue to find, are necessary to reduce interference to NTSC and to DTV service, particularly in congested markets where there is little maneuvering room. The Modified Table:

- Assigns Channel 6 in certain markets;
- Allows a minimum co-channel spacing of 240 km between DTV channels and channels 14 through 20 that are allocated for land mobile use; and
- Does not protect Land Mobile Channel 20 in the Philadelphia market.

With the exception of Channel 20 in Philadelphia, the Modified Table does not use channels presently allocated to land mobile use. As the Notice itself recognizes (Notice, at 33), making Channel 20 available for DTV does significantly reduce interference in the congested northeast market -- an area in which there are very few channel options.[99/]

In fact, Broadcasters support, as others have also advocated, reallocation of land mobile channels in all markets, not just in the Philadelphia area, for the transition to DTV. Using at least one of the channels now allocated for land mobile use,

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[98/] Broadcasters hope to be in a position to propose minimum service areas in late-filed comments.

[99/] Protecting land mobile channel 20 in Philadelphia would require the reassignment of Allentown, PA from DTV channel 20 to 54, Philadelphia from DTV channel 54 to 66, Vineland, NJ from DTV channel 66 to 21, and Camden, NJ from DTV channel 21 to 22. However, such reassignments would cause an adjacent channel violation between NTSC station 65 in Vineland and DTV channel 66 in Philadelphia.

particularly those channels that are lightly used, would improve interference during the critical transition and simplify the DTV allotment/assignment process.[100/] Such reallocation would not impair land mobile operations. Rather, Broadcasters propose that a more efficient use of the spectrum is to make one of the two channels now allocated for land mobile use available solely to public safety services. Non safety-related services should make use of the allocated frequencies in the 800 and 900 MHz bands and in the newly allocated PCS spectrum.

To avoid potential interference between DTV operations on Channel 6 and FM radio operations, the Notice proposes to make DTV assignments to Channel 6 "only where there is no other readily available allotment opportunity that would meet the minimum spacing requirements." Notice, at 32. The Notice further proposes to apply a standard similar to that now used to prevent interference between NTSC Channel 6 and FM radio. Id. The Modified Table assumes Channel 6, using proper engineering design and safeguards, can be used for the transition. As stated in previous comments, Broadcasters believe the lower power of DTV transmitters, the improved performance of DTV transmitter out-of-band emissions, and improved DTV receivers will reduce interference between DTV Channel 6 and FM radio.[101/]

B. NTSC Database Corrections and Channel Modifications

The Modified Table will have to be adjusted to reflect NTSC database changes and acceptable DTV channel and/or facility changes. First, as described in Part

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[100/] See, e.g., Reply Comments of MSTV, PR Docket No. 91-170 (March 16, 1992), at 3-5; see also Comments of Association for Maximum Service Television, Inc., PR Docket No. 92-235 (May 28, 1993), at 10-11; Joint Comments II at 36-38.

[101/] See, e.g., Joint Comments IV, at 30.

III, over 150 stations identified changes or corrections to the FCC TV Engineering Data Base (attached at Appendix C). Broadcasters urge that these corrections be incorporated as soon as possible into the final DTV Table.

Second, as part of the national educational campaign, the Broadcasters Caucus received over 200 requests for analyses of Modified Table DTV channel coverage and interference characteristics and/or alternative DTV channel assignments. Each was evaluated to determine whether it met the criterion of no new interference. Some of these changes can be implemented immediately. Others will require station engineering changes in order to avoid interference to other stations, while still others will require further consideration by the proposed industry committee created to consider table modifications. Broadcasters therefore have attached to the Modified Table a list of station requests for information and/or analyses of substitute DTV channels. We propose that, as part of the modification process advocated by both the Notice and Broadcasters, processing the proposals on this list and those that will be added should be the work of the industry channel coordinators. We urge that stations be encouraged to continue to identify questions and problems with proposed DTV channels and that the Commission develop an interim joint industry and FCC process to consider and incorporate reasonable channel changes to the DTV table both before and after it is adopted.

V. THE COMMISSION SHOULD PERMIT DTV STATIONS TO MODIFY THEIR STATIONS IN RESPONSE TO REAL WORLD DEMANDS AND SHOULD PROTECT DTV STATION CONTOURS DURING THE TRANSITION

Over the past three months, as broadcasters have gathered to discuss the challenges of the DTV transition in the context of DTV channel assignments, one fact

has emerged with absolute clarity -- nothing about the DTV transition process will be static and the allotment and assignment of DTV channels must respond to this dynamism. The assignment of DTV channels requires the Commission to fix data points (*e.g.*, transmitter sites) that are actually in flux. As a result, any allotment/assignment table that is ultimately adopted must be alive to the significant number of changes that will be required over the course of the transition. By the same token, the Commission must act to preserve DTV station contours as DTV assignments change and new allotments are made. Essential to this process of continually modifying and improving the DTV allotment/assignment table will be industry cooperation. In August, Broadcasters launched the DTV channel coordination process that we proposed in 1995 and that the Notice views favorably. Below, in Section B, we outline how this process can help to safeguard and manage the flexibility that the DTV transition requires. Section A sets forth the regulatory policies that should be in place to handle the DTV transition period flux.

A. THE COMMISSION SHOULD ADOPT A LIBERAL POLICY TOWARD DTV STATION MODIFICATIONS, AND IT SHOULD USE UNASSIGNED/UNALLOTTED DTV CHANNELS TO INCREASE NEW SERVICE WHILE PROTECTING NTSC AND PREDICTED DTV SERVICE

The proper initial assignment of DTV channels is an important first step in administering a successful transition, but it is only a first step. Continual tweaking of any table that is adopted will be required to meet three different challenges: modifications of NTSC facilities, modifications of DTV facilities, and unassigned DTV channels and new DTV allotments. The guiding principle for dealing with each such challenge should be to provide as much flexibility as possible, while maximizing

television service and accommodating as many displaced translator and LPTV stations as possible.

1. NTSC Station Modifications

With respect to changes to NTSC facilities, we support the Notice's proposal to consider applications for modifications on a case-by-case basis. See Notice, at 26-27. We believe, however, that pending and new applications should be considered in the order in which they were filed. In processing applications to modify NTSC facilities, the Commission should determine whether the proposed change will create new interference to the protected contour of any new DTV channel. The protected contour should be coextensive with the NTSC coverage area of the paired DTV licensee. Of course, as alternative DTV channel assignments are proposed or adopted, the DTV contours relevant to an NTSC facility modification may change, too. The Commission should take into account such proposed or adopted DTV channel changes in processing NTSC modification requests.

2. DTV Station and Channel Modifications

As the Notice recognizes, many licensees will request DTV facility and related channel changes both before a DTV table is adopted and throughout the DTV station construction period. See Notice, at 3, 19, 44. Requests to change DTV channels or facilities will likely fall into the following categories: (1) pre- and post-adoption changes necessary to replicate modified NTSC facilities; (2) pre- and post-adoption changes to maximize or shift the DTV coverage area or to reduce power; (3) pre- and post-adoption changes in response to new information about the viability of the planned station (*e.g.*, whether the existing tower can support the necessary DTV antenna); and (4) post-adoption changes to respond to local, state, and federal regulatory agendas (*e.g.*,

RF radiation standards, zoning regulations, and FAA restrictions). With respect to each of these categories, broadcasters need to have confidence that the Commission will approve changes relatively swiftly and according to objective criteria. Broadcasters also need assurances that federal, state, and local regulatory obstacles will not impair their opportunity to transition to DTV.

As a general rule, the Commission should approve any proposed change (whether pre- or post-adoption of a DTV table) that does not cause unaccepted additional interference to assigned NTSC or DTV stations.[102/] Throughout the transition period, DTV stations should be protected from interference up to the extent of the paired NTSC service area.[103/] There is a danger that without an assurance of flexibility, those stations that find their assigned channels unacceptable or infeasible could tie up the assignment process in administrative or judicial litigation. The best way to avoid this is to establish a policy of flexibility at the outset.

In addition, the Commission should adopt a liberal waiver policy with respect to DTV facility application and construction deadlines. The new RF radiation standards that the Commission adopted in August 1996[104/] may make it more difficult for stations to construct DTV facilities, given the substantial power that some of these facilities will require. At the same time, the Commission's Report and Order on RF

[102/] Increased interference that a neighboring licensee will accept, for example, because it falls into an unpopulated area, should be tolerated. As discussed below, negotiations among licensees should take place in the context of the regional coordination process.

[103/] This is in contrast to the approach reflected by Rule 73.612 of the Commission's rules which relates interference protection to minimum spacing criteria.

[104/] See In re Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report & Order, ET Docket No. 93-62 (August 1, 1996), *petition for reconsideration pending*.

radiation standards did not preempt more stringent state and local RF energy standards that could serve to further frustrate DTV station construction plans.[105/] Local zoning regulations may add further layers of delay as stations must apply to move transmitter sites or add height to existing towers. FAA regulations will further complicate these efforts. Without any control over the pace or outcome of the approvals necessary to build a DTV station, some broadcasters may be forced to apply for extensions to construct their DTV stations. Others may have to file for alternative DTV channels late in the game, when it becomes clear that they cannot build a station along the lines that the adopted table assumes. The Commission should liberally grant such applications for extensions[106/] and channel changes.[107/]

The Commission should also consider limited federal preemption of local zoning laws to permit stations to site and construct DTV towers where necessary to roll out the DTV service. Such preemption could help to ensure that delays are kept to a minimum. At the very least, the Commission should issue a policy statement strongly endorsing the conversion to digital and urging other governmental bodies to act both cooperatively and expeditiously in granting approvals needed to implement the transition.

A good many stations may not need to modify the technical parameters contained in an adopted table, but may need to start with small facilities until they have

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[105/] See Comments of the National Association of Broadcasters, ET Docket No. 93-62 (January 25, 1994), at 40-45 and Comments of MSTV and NAB, ET Docket No. 93-62 (January 25, 1994), at 8-9.

[106/] Stations granted extensions should continue to have the opportunity to build DTV stations and their DTV station contours should continue to be protected from interference. See, e.g., Joint Comments VI, at 26-28; Joint Comments II, at 24-28.

[107/] Contrary to the approach the Commission presently takes, see 47 C.F.R. § 73.607, DTV channels should be made available on the basis of purely technical criteria and should not necessarily be allocated by community on an exclusive basis.

gathered enough capital to build full facilities. These stations should receive full contour protection, as all full power stations, from interference from other primary and secondary services.

3. Unassigned DTV Channels and New Allotments

The Notice requests comment on how the Commission should assign presently unassigned DTV channels and create new allotments. See Notice, at 21, 40-41. Given the flux that will characterize the first few years of the transition, Broadcasters propose that the Commission refrain from assigning unassigned DTV channels (which are mostly in rural areas) or making new allotments throughout the DTV station construction period. This will allow licensees the flexibility needed to make DTV channel changes and otherwise respond to external circumstances and new information about DTV service characteristics. After this period, we believe it would be appropriate to give LPTV and translator stations that were displaced from their existing channels special consideration in assigning DTV channels that are still unassigned or have not been built.[108/] In assigning DTV channels to LPTVs, translators, or new licensees, the Commission should employ a contour protection methodology rather than a geographic spacing approach. See Notice, at 42-44. By protecting DTV contours, the

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[108/] The Ashbacker doctrine is not implicated by a decision to delay accepting applications for channel assignments or allotments from new entrants. It is settled that the Ashbacker doctrine, dealing with the hearing rights under 47 U.S.C. § 309, only applies when eligible initial applicants have filed mutually exclusive applications and does not apply to "prospective applicants." Reuters Ltd. v. FCC, 781 F.2d 946, 951 (D.C. Cir. 1986); see also, In re Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-band, FCC 96-259 (June 18, 1996) and Fourth NPRM, at 13. Once the Commission decides to assign new licenses, no Ashbacker rights are triggered so long as the Commission is merely defining a category (or categories) of eligible applicants rather than rejecting eligible applicants without comparing them to others.

Commission will provide as many new opportunities as possible without robbing viewers of the unfolding DTV service that existing licensees will provide.

The Commission should take a similar approach to creating new DTV allotments. New allotments should not be considered until the construction period has passed. At that point, the Commission should accept requests for new allotments subject to the contour protection for assigned DTV and NTSC stations. This approach would make it unnecessary to adopt maximum facility specifications, see Notice, at 40, which are a vestige of a geographic spacing approach to channel assignments.[109/] Instead, the Commission should permit new facilities that do not create new interference.

Broadcasters have long recognized the importance of preserving noncommercial vacant allotments in the DTV world.[110/] Undoubtedly, adoption of the Modified Table would permit the Commission to replace some of the noncommercial vacant NTSC allotments with DTV equivalents. After the transition, the Commission should replace those noncommercial vacant NTSC allotments that could not be replaced during the transition so as to ensure the opportunity for public television to expand in the DTV world.

B. PRIVATE FREQUENCY COORDINATING COMMITTEES SHOULD BE USED TO WORK WITH LICENSEES TO PROPOSE DTV FACILITY AND CHANNEL MODIFICATIONS

In 1995, Broadcasters first proposed the use of industry coordinating committees to provide advice on pre- and post-adoption modifications to the DTV

[109/] See Part IV above, in which we address the question of maximum and minimum facilities in terms of the initial DTV table.

[110/] See Broadcasters' Allotment/Assignment Approach, at 11.

table.[111/] The Notice supports this proposal (Notice, at 44), and Broadcasters have taken the first steps to establish a structure that could be used throughout the transition period. These committees would be responsible for initially evaluating and attempting to accommodate proposed channel and facility changes as well as proposed new assignments using the objective principles and model that underlie the Modified Table.[112/] As the Commission itself has recognized, evaluating potential DTV channels and their potential impact on other stations is extremely complex and technically challenging. See, e.g., Notice, at 36. Industry coordinating committees would facilitate necessary changes while simultaneously easing the administrative and financial burden on the Commission.

1. Implementation of Committee Process

Committee Review. As noted above, the proposed frequency coordinating committees would utilize the objective engineering principles underlying the DTV table to evaluate proposed changes to DTV channel assignments and facilities. Broadcasters have attempted to put this proposal into action in preparation for these comments (see Appendix A). Stations in the continental U.S. were divided into ten regions, each of which was assigned a Non-Technical Regional Coordinator (usually a group or station executive), a Technical Coordinator (usually a group or station engineer), a liaison to the coordinating industry group (the Broadcasters Caucus) and a volunteer consulting engineer. Regional meetings were held in each region to discuss allotment/assignment

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[111/] See Broadcasters Allotment/Assignment Approach, at 29-32.

[112/] In the NTSC context, proposals are evaluated case-by-case and some cases go before the Commission in hearings. The Commission appears to have concluded, and we firmly believe, that the cumbersome and time consuming processes used to evaluate changes in the NTSC environment is inadequate in the more dynamic DTV era.

issues affecting that region's stations. Stations then had the opportunity to obtain coverage maps, through their Regional Coordinators, produced by the Broadcasters' software.[113/] Those stations that perceived problems with their assigned channels could make reasonable requests for a list of alternative DTV channels available in their market as well as coverage and interference data. Those requests and any proposed channel changes that resulted from such requests are recorded in the list attached to the Modified Table. In short order, the Regional Coordinators will recommend that the Modified Table be amended to reflect non-conflicting requests for alternative DTV channels that better suit the licensee and create no new interference.[114/] This same process will continue after a table is adopted, and we urge the Commission to expedite consideration of such proposals that have the imprimatur of the regional coordination process.

The regional coordination process has developed to different degrees in the different regions. Some stations have participated heavily while others have not; some requests for information were processed quickly, while others are still pending. Undoubtedly, some of the regions may need to be redrawn and other changes made. Yet just as undoubtedly, the regional coordination process has already served several invaluable functions. It has enabled broadcasters to coordinate their requests for DTV channel and facilities changes and to provide technical support for their requests. It has

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[113/] Generally, stations received coverage maps of the DTV channel assigned to them by the Modified Table. However, they could also receive maps of the FCC DTV Table channel assignments.

[114/] The Regional Coordinators may be unable to make prompt decisions about certain requests, such as those that conflict with each other, depend on NTSC database changes that need to be verified, or require additional FCC authorizations. In such cases, the Regional Coordinators will advise the Commission as to the technical feasibility of various proposals.

also spared the Commission many requests for changes that are impractical or would create an unacceptable degree of interference. Perhaps most importantly, the process has educated licensees within a given market or region about the applicable constraints and afforded them an opportunity to begin to find joint solutions. In this sense, the regional coordination process encourages negotiated agreements among licensees (see Notice, at 19-20), but does so within the broader regional context in which DTV channel assignments must be considered.

As the regional coordination process moves forward, we propose that the following factors be considered in any proposal for DTV channel or facility change: spectrum and administrative efficiency; avoidance of viewer disenfranchisement; preservation of NTSC service; expansion of DTV service; and interference to neighboring stations. Coordinating committees should be permitted to review all modification requests, including channel change requests, requests for new DTV assignments, requests for transmitter site relocations and other facility changes (for both NTSC and DTV stations), collocation issues, and adjacent-channel and Land Mobile interference concerns.

Funding. Broadcasters continue to recommend that the proposed frequency coordinating committees be funded by licensee contributions. No federal funds would be required for the operation of the committees.[115/]

Timing. The use of industry committees will facilitate efficient and fair resolution of proposed modifications to the DTV table while minimizing the burden on the Commission. Discrete, rather than system-wide, changes to the final DTV table

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[115/] See Broadcasters Allotment/Assignment Approach, at 29.

could be recommended to the Commission on a relatively expedited basis, with all due consideration being given to potential interference to neighboring stations. Use of the computer model used to generate the DTV table would promote prompt and efficient review by the proposed frequency coordination committees.

Commission Review. The Commission would retain ultimate control of the process through its ability to monitor the committees' performance and responsiveness through licensee surveys and similar studies.[116/]

2. Legal Authority

The Commission also invited comments on whether statutory changes are necessary or appropriate to facilitate the use of industry frequency coordinators. See Notice, at 44. Such private committees have assisted the Commission for almost 20 years in the auxiliary broadcast service and for nearly 40 years in the land mobile radio service.[117/] In 1958, the Commission first amended its rules specifically to recognize frequency coordinating committees.[118/] Congress has since amended the Communications Act of 1934 to allow the use of frequency coordinators in the spectrum

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[116/] For example, in 1994, the Commission conducted an eight week review of coordinator errors. Private Radio Bureau Frequency Coordinator Error Rate Study, 10 FCC Rcd. 730, 730 (June 22, 1994). The Commission noted that it "will periodically conduct additional studies of all frequency coordinator error rates to insure that the coordinators are serving the public in a responsible manner." Id.

[117/] See In re Shared Uses of Broadcast Auxiliary Facilities, 93 FCC 2d 570 (1983); In re Frequency Coordination Procedures for Broadcast Auxiliary Services, 1 FCC Rcd 292 (1986). In the private land mobile license context, frequency coordinators process thousands of applications by considering the applicant's specific requirements in light of the over one million licensees and more than 25 different radio services or categories. The process alleviates the need for applicants with few resources to conduct individual field studies.

[118/] See id. at 1096 (citing In the Matter of Amendment of Part 11, Rules Governing the Industrial Radio Services, To Delete, Modify and Create Services and to Effect Changes in the Availability of Frequencies, First Report and Order, Docket No. 1191, FCC 58-602, 23 Fed. Reg. 4784 (June 28, 1958)).

management process.[119] In 1982, it expressly affirmed the Commission's authority to use frequency coordinating committees. See 47 U.S.C. § 332(b)(1). In so doing, Congress recognized that frequency coordinating committees provide for efficient use of congested land mobile spectrum and enable small business operators to be placed on competitive parity with others by alleviating the need for expensive engineering studies in the application process.[120]

We believe the Commission's reliance on coordination committees in the DTV context should not trigger any additional requirements (such as making meetings open and releasing documents to the public) under the Federal Advisory Committee Act, 5 U.S.C.App. 2. ("FACA"). The committees will be privately formed and funded, will

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[119] See Frequency Coordination in the Private Land Mobile Radio Services, 103 FCC 2d 1093, 1098 (1986) (citing "The Communications Amendments Act of 1982," P.L. 97-259, 96 Stat. 1087, Sept. 13, 1982).

[120] See H.R. CONF. REPT. NO. 765, 97th Cong., 2d Sess. 53 (1982), reprinted in 1982 U.S.C.C.A.N. 2237 ("Conference Report"). After reviewing data from the FCC on advisory coordinating committees in the frequency assigning process, the Conferees noted:

> The frequency coordinating committees not only provide for more efficient use of the congested land mobile spectrum, but also enable all users, large and small, to obtain the coordination necessary to place their stations on the air. Without such frequency coordinating committee activity, some of these applicants would not be able to afford the engineering required in the applications process. Thus, by equalizing the frequency selection process for all applicants, the applicants are placed on a competitive parity, with no one applicant operating on a better or more commercially advantageous frequency than his or her competitor. The Conferees note that this pro-competitive aspect of frequency coordination is of particular importance to small business operators.

Id. at 2297.

not be directly managed by agency officials, and, consequently, will not be "established or utilized" by an agency within the meaning of the Act.[121/]

Should the Commission find that additional statutory authority is desirable, the following amendment could be pursued. Currently, 47 U.S.C. § 332(b) provides for advisory coordinating committees to assist the Commission in coordinating the assignment of frequencies to stations in the private mobile services and the fixed services.[122/] This statute specifically exempts advisory coordinating committees which furnish such assistance to the Commission under this subsection from the requirements of FACA. See 47 U.S.C. § 332(b)(4). If this section were amended, for example, specifically to include "and stations in the DTV service" in the subsection describing the functions of the advisory coordinating committees (47 U.S.C. § 332(b)(1)), the Commission without question would avoid any obligation to comply with FACA as a result of establishing DTV Table frequency coordinating committees.

[121/] See 5 U.S.C.App.2 at §3(2); see, e.g., Public Citizen v. Dep't. of Justice, 491 U.S. 440, 457 (1989) (ABA Committee that advises the President on judicial appointments is not subject to FACA requirements); Nader v. Baroody, 396 F.Supp. 1231 (D.D.C. 1975) (A series of bi-weekly meetings held at the White House and attended by select groups invited by the President's Assistant for Public Liaison was not subject to FACA requirements); Washington Legal Foundation v. U.S. Sentencing Com., 17 F.3d 1446 (D.C. Cir. 1994) (Group that advises the Sentencing Commission is not subject to FACA requirements); Natural Resources Defense Council v. EPA, 806 F.Supp. 275 (D.D.C. 1992) (Group that advises the EPA on state implementation of certain environmental programs is not subject to FACA requirements).

[122/] As noted earlier, Congress has recognized the value of frequency coordination committees. See Conference Report, at 2297 ("To further promote fairness in frequency allocation, the Conferees encourage the Commission to recognize those frequency coordinating committees for any given service which are most representative of the users of that service").

VI. THE FCC SHOULD ENSURE THAT TRANSMITTER MASK, TUNER STANDARDS, AND CHANNEL LABELING RULES FACILITATE THE TRANSITION TO DTV

There are several ancillary but extremely important technical issues that are critical to the success of any DTV allotment/assignment process. Some of these issues have been raised by the Commission in the Notice. Others, although raised previously in this proceeding, are necessarily tied to the consideration of any DTV allotment/assignment proposal.

A. TRANSMITTER MASK PROPOSAL

The Fifth NPRM proposed an RF mask for DTV stations intended to protect NTSC signals on adjacent channels.[123/] Broadcasters reserved comment on the proposed mask until the ATSC had completed work on its specifications for the appropriate mask.[124/] The ATSC has not yet completed its work, but the ATTC tests conducted in July 1996 and reported in October suggest that the mask proposed in the Fifth NPRM will not be stringent enough to adequately protect adjacent NTSC channels. Broadcasters will propose a tighter RF emission mask to better protect adjacent NTSC channels upon the completion of the ATSC's work.

B. RECEIVER STANDARDS

The success of DTV depends in large part on ensuring that viewers enjoy uninterrupted and high quality DTV service. Broadcasters have long emphasized that, in order to ensure such reliable DTV service, the Commission should require all receivers

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[123/] See Fifth NPRM, at 56.

[124/] See Joint Comments VIII, at 34 n.56.

to achieve the minimal interference levels assumed by the Modified Table.[125/] We will fail in our common objectives to replicate NTSC service areas and to minimize interference and disruption, if receivers do not perform at the level called for by the allotment/assignment plan. The well-known "cliff effect" of DTV signals requires that receivers maintain the DTV signal at all times. Excessive interference will eliminate the signal entirely.

Broadcasters therefore take this opportunity to continue to urge the Commission to require equipment manufacturers to design tuners that perform at least to the minimum capabilities of the Grand Alliance system and at the level assumed by the Modified Table with respect to the 7dB UHF noise figure. Minimum mandatory receiver standards should require adaptive equalizer circuits, tuner performance, and noise figures necessary to protect the public's DTV signals from interference. Such a minimal requirement is both technologically and economically feasible for equipment manufacturers. Because most DTV channels will be assigned in the UHF band, there is a possibility that manufacturers will be tempted to design DTV receivers and antennas primarily for UHF reception. The Commission has authority under the All Channel Receiver Act to require that all receivers be manufactured to receive all signals, whether UHF or VHF, at an acceptable quality. It should do so to ensure that no band becomes, or is considered to be, second rate.

[125/] For a discussion of mandatory receiver standards, see, e.g., Joint Comments VIII, at 32-34; Joint Comments VI, at 36-37; Broadcasters Allotment/Assignment Approach, at 33. As has been noted in previous Broadcaster comments, the Communications Act, 47 U.S.C. § 302a, gives the FCC the authority to implement receiver standards.

C. CHANNEL LABELING

The Commission has requested comments regarding the appropriate channel labeling scheme that should be employed for the new DTV Service. See Notice, at 33-34. This is an extremely important issue that, if handled thoughtfully, can significantly minimize viewer disruption and confusion during the DTV transition. Broadcasters believe that the most fundamental element to any labeling scheme should be maintaining channel identity. Viewers should be able readily to identify the corresponding DTV channels of their NTSC stations both during and after the transition. Because the spectrum eventually will be repacked and some channels relocated, the DTV channel label should not be tied to the DTV frequency.[126/] We further agree with the Commission that channel labels should be as brief and simple as possible. See Notice, at 34. This will assist viewer identification of stations. Further, as Broadcasters have stated in previous comments, stations should have the ability to maintain their identity across the carriers of their signals.[127/]

Adherence to such labeling principles should do more than benefit viewers. Broadcasters came to realize during the national campaign that station dissatisfaction with specific channel assignments often dissipates when viewer-friendly channel labeling schemes are mentioned. A labeling scheme therefore that is easy to follow and that preserves identity over time and across carriers may alleviate station anxieties about losing viewers due to DTV assignments. This very well could have the

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[126/] See also Joint Comments VI, at 35.

[127/] Joint Comments VI, at 34-35.

beneficial effect of reducing requests for channel changes and of encouraging stations to build DTV facilities soon rather than later.

Although the Commission has offered several labeling schemes in the Notice, Broadcasters at this time are not commenting on specific suggestions. Instead, Broadcasters recommend the creation as soon as possible of an inter-industry committee to explore this very important issue.[128/] Representatives from the broadcasting industry, equipment manufacturers, and cable industry should be included in this process. Working within timeframes established by the Commission, such a committee should:

- evaluate viewer perception of and broadcaster reaction to labeling options;
- consider equipment changes necessary to accommodate and to display various labeling schemes; and
- make a recommendation to the Commission.

Broadcasters believe that channel labeling is of such importance that proposals should not be finalized during this proceeding when all eyes have been turned primarily to channel allotments/assignments. The inter-industry channel labeling committee would ensure that this issue receives the full consideration it deserves and that the Commission receives thoughtful and well-planned labeling recommendations.

CONCLUSION

For the reasons set forth above, the Commission should adopt the DTV channel planning principles underlying the Modified Table and permit the regional coordination process to go forward both before and after a final DTV table is adopted.

[128/] We understand that the ATSC has recognized the need to address this issue and may place it on the agenda of one of the technical subgroups.

The Commission should also adopt the DTV receiver standards necessary to bear out the interference assumptions embodied in the Modified Table and channel labeling protocols that will reduce viewer confusion through the transition to DTV. In its decisions generally, the Commission should prize continued NTSC service, minimum interference, and maximum DTV service to the public above all else.

Respectfully submitted,

ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC.

Jonathan D. Blake /epb

Jonathan D. Blake
Gerard J. Waldron
Ellen P. Goodman
Victoria M. Huber
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Post Office Box 7566
Washington, D.C. 20044
Phone: (202) 662-6000
Fax: (202) 662-6291

Its Attorneys

Victor Tawil /epb

Victor Tawil
Senior Vice President
Association for Maximum Service
Television, Inc.
1776 Massachusetts Avenue, N.W.
Suite 310
Washington, DC
Phone: (202) 861-0344
Fax: (202) 861-0342

ASSOCIATION OF AMERICA'S
PUBLIC TELEVISION STATIONS

/s/ Marilyn Mohrman-Gillis
Marilyn Mohrman-Gillis
Vice President,
Policy and Legal Affairs
Association of America's
Public Television Stations
1350 Connecticut Ave., NW
Washington, DC 20036
Phone: (202) 887-1700
Fax: (202) 293-2422

ASSOCIATION OF LOCAL
TELEVISION STATIONS, INC.

/s/ James J. Popham
James J. Popham
Vice President & General Counsel
1320 19th Street, N.W.
Suite 300
Washington, D.C. 20036
Phone: (202) 887-1970
Fax: (202) 887-0950

ABC, INC.

/s/ Sam Antar
Sam Antar
Vice President, Law and Regulation
77 West 66th Street
16th Floor
New York, New York 10023
Phone: (212) 456-6222
Fax: (212) 456-6202

CBS INC.

/s/ Mark W. Johnson
Mark W. Johnson
Associate General Counsel
600 New Hampshire Ave., N.W.
Suite 1200
Washington, D.C. 20037
Phone: (202) 457-4513
Fax: (202) 457-4611

CHRIS-CRAFT INDUSTRIES, INC.

/s/ John C. Siegel
John C. Siegel
Senior Vice President
650 California Street
San Francisco, California 94108
Phone: (415) 249-4405
Fax: (415) 397-1924

FOX TELEVISION STATIONS, INC.

/s/ Molly Pauker
Molly Pauker
Vice President,
Corporate and Legal Affairs
5151 Wisconsin Avenue, N.W.
Washington, D.C. 20016
Phone: (202) 895-3088
Fax: (202) 895-3222

NATIONAL ASSOCIATION OF BROADCASTERS

/s/ Henry L. Baumann
Henry L. Baumann
Executive Vice President
& General Counsel
1771 N Street, N.W.
Washington, D.C. 20036-2891
Phone: (202) 429-5458
Fax: (202) 429-3526

NATIONAL BROADCASTING COMPANY, INC.

/s/ Michael J. Sherlock
Michael J. Sherlock
Executive Vice President, Technology
30 Rockefeller Plaza
Suite 1022
New York, New York 10112
Phone: (212) 664-4444
Fax: (212) 664-7070

PUBLIC BROADCASTING SERVICE

/s/ Paula A. Jameson
Paula A. Jameson
Senior Vice President,
General Counsel and Secretary
1320 Braddock Place
Alexandria, VA 22314
Phone: (703) 739-5464
Fax: (703) 739-5358

TRIBUNE BROADCASTING COMPANY

/s/ Dennis FitzSimons
Dennis FitzSimons
Executive Vice President
435 N. Michigan Avenue
Chicago, Illinois 60611
Phone: (312) 222-9100
Fax: (312) 222-4206

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